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## **COURT STRIKES DOWN DISCRIMINATION IN PITTSBURGH POLICE DEPARTMENT** *(Hopp v. City of Pittsburgh)*

The U.S. Court of Appeals for the Third Circuit handed the Washington Legal Foundation (WLF) a victory today when it decided that the Pittsburgh Police Department unlawfully discriminated against certain job applicants when it used a subjective oral examination to advance the city's policy of racial diversity.

WLF filed its brief on behalf of itself, the Allied Educational Foundation, and Howard L. Fargo, a Member of the Pennsylvania House of Representatives.

Certain applicants for the Pittsburgh Police Department sued the city, charging that it rejected them because of their race. At trial they showed that the city had used an oral examination and executive discretion in ways that strongly implied racial discrimination. The city responded by claiming that its hiring practices were neutral with regards to race. A jury delivered a verdict in favor of the applicants. The city then appealed, arguing that the verdict should be reversed because the applicants should have met "a heightened standard" to establish a presumption of intentional discrimination, because they are white.

In a brief filed with the court, WLF had argued that federal law gives every person the same opportunity to use indirect evidence as proof that an employer engaged in intentional racial discrimination. Neither the language of the law, its legislative history, nor Supreme Court precedent supports the notion that a person needs to show "something extra," merely because of his race, when trying to establish a presumption of intentional racial discrimination. WLF also argued that reading federal law to impose an additional burden on white plaintiffs probably violates the Fourteenth Amendment's guarantee of "equal protection of the laws."

In its opinion the court rejected the city's arguments, holding that the trial court correctly applied federal law to the plaintiffs in this case. It specifically held that "a reasonable factfinder could find that the City's explanation of its hiring decisions was pretextual." In other words, the court concluded that there was ample evidence that the city had engaged in illegal racial discrimination when it used a subjective oral examination to exclude a disproportionate number of white police officer candidates.

"Federal law gives every person the same protection from racial discrimination in the workplace," said WLF's Senior Counsel for Litigation Affairs, Shawn Gunnarson. "We are pleased with the court's decision, which affirms the importance of ensuring that no one—especially an applicant for government employment—ought to be discriminated against because of the color of his skin."

The Washington Legal Foundation is a nonprofit public interest law and policy center

with supporters nationwide. It devotes a significant portion of its resources to defending and promoting the principles of free enterprise and individual rights.

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